

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN 20 2005

In the Matter of:

Federal Communications Commission  
Office of Secretary

Request for Expedited Declaratory  
Ruling Concerning the Territorial  
Exclusivity Rule, Section 73.658(b)  
of the Commission's Rules

MB Docket No. 04-75

DOCKET FILE COPY ORIGINAL

**JOINT OPPOSITION TO SUNBELT'S RENEWED MOTION**

Max Media of Montana LLC ("Max Media"), and Destiny Licenses, LLC ("Destiny"), by their attorneys, hereby oppose the "Renewed Motion of Sunbelt Communications Company to Terminate Proceeding" ("Renewed Motion") filed by Sunbelt Communications Company ("Sunbelt") on June 14, 2005. The Renewed Motion is wholly without merit, and is another attempt by Sunbelt to obscure its violation of the network territorial exclusivity rule, 47 C.F.R. §73.658(b). For the reasons set forth below, and in the previous pleadings and *ex parte* submissions of Max Media and Destiny in this proceeding, the Commission should deny the Renewed Motion and grant the relief requested in the "Joint Motion for Expedited Issuance of Orders to Show Cause" filed separately by Max Media and Destiny on June 17, 2005.

**I. SUNBELT'S FLAWED, ELEVENTH-HOUR ATTEMPT TO CURE ITS VIOLATION DOES NOT MAKE THIS PROCEEDING MOOT**

Sunbelt continues to assert a flawed, eleventh-hour attempt to cure its violation of the network territorial exclusivity rule, claiming its acquisition of low-power television station KBGF-LP renders moot the issues in this proceeding. Max Media has previously addressed Sunbelt's arguments. *See, e.g., Ex Parte* Submission dated June 10, 2005 (attached as Exhibit 1)

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and *Ex Parte* Submission dated June 3, 2005 (attached as Exhibit 2). In sum, KBGF-LP should not be considered a "broadcast station" in the Great Falls community sufficient to bring this case within the scope of the *Scripps Howard* precedent (see Letter to Eugene F. Mullin and Nathaniel F. Emmons, 10 FCC Rcd 4416, 78 RR 2d 88 (1995)). The facts of the *Scripps Howard* case, where the network organization was switching affiliations among stations licensed to the same community (which existed and were owned by the accused party at the time of the arrangement) are materially different from the facts in this proceeding. Here, the facts constituting the violation have their roots in 1999, when it is apparent that an arrangement involving the termination of KTGF(TV)'s NBC affiliation agreement existed between Sunbelt and NBC. At that time, Sunbelt did not own any broadcast station licensed to the community of Great Falls, Montana.

The temporal sequence of events is very significant because the network territorial exclusivity rule was, and is, intended to *prevent* anti-competitive conduct.<sup>1</sup> If the Commission permits licensees to engage in violate-then-seek-a-cure conduct such as Sunbelt urges, then the preventative nature of the rule will be destroyed. Local markets will be disrupted by uncertainty. Harms that cannot be cured will result. The public interest will suffer to the detriment of licensees, their viewers and advertisers. As a general policy matter, the Commission should not indulge the concept that licensees will be permitted to engage in unlawful conduct if they can subsequently find a cure.

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<sup>1</sup> The *Scripps Howard* precedent did not depart from the policy of preventing undesired licensee conduct. The facts of the *Scripps Howard* case involved the shifting of network affiliations among stations licensed to the same community, but the network affiliation went to stations *in existence at the time of the understanding that were owned by the licensee accused* of the violation.

Sunbelt attempts to leverage its argument with Section 74.780 of the Commission's rules. This attempt completely ignores the Commission's precedent clarifying that Section 74.780's incorporation of certain full-power television station rules into the LPTV rules does not render LPTV stations equivalent to full-power stations. *See, e.g., Letter from Univision, Inc. Concerning the Applicability of 47 C.F.R. Sec. 73.658(j) and 47 C.F.R. Sec. 73.658(k)*, 4 FCC Rcd 2417 (1989) (wherein the Commission decided that Section 74.780 "refers to those subsections of Sec. 73.658 that concern the contractual relationships of stations in the low power service, not those that concern programming practices."). Section 74.780 does not mean that LPTV stations count for purposes of the *Scripps Howard* precedent.

## **II. THE RENEWED MOTION RELIES ON MISREPRESENTED FACTS**

The Renewed Motion, and Sunbelt's *ex parte* submission dated June 16, 2005, contain a number of factual inaccuracies and misrepresentations concerning the operation of KTGF(TV) under both Max Media and Destiny. Attached are declarations from the President of Max Media of Montana, and the President of Destiny Licenses, LLC. These declarations correctly illustrate KTGF(TV)'s strong performance as a full-power television service for Great Falls viewers. *See* Declaration of Linda Gray (attached as Exhibit 3) and Declaration of Darnell Washington (attached as Exhibit 4).

KTGF(TV)'s local news operation was launched under Max Media's ownership. KTGF(TV) continues to employ a full-time reporter who is responsible for the daily gathering and reporting of stories in and around Great Falls. Further, Max Media's ownership enhanced KTGF(TV)'s value to the Commission's policy of localism in the Great Falls community. As the attached declarations state, Max Media's KTGF(TV) produced and aired programs focusing on Great Falls citizens and organizations. Further, KTGF(TV) aired local community bulletins,

locally-produced programming, and Montana State University sporting events. Under Destiny's control, KTGF(TV) continues the tradition of local service, sponsoring local projects such as the Golden Mental Health Capital Campaign, Boys & Girls Club's Mardi Gras fundraiser, and the Montana Addy Awards. KTGF(TV) also continues to produce commercials and promote campaigns for Great Falls organizations such as The Rivers Edge Trail, Food Bank, and the Missouri River Dance Company. KTGF(TV) was, and remains, dedicated to providing Great Falls with excellent local television service. In sum, Max Media's local programming on KTGF(TV) enjoyed considerable success, and Destiny is working to improve on that record.

### **III. THE RENEWED MOTION RAISES MERITLESS, IRRELEVANT, AND DISTRACTING SIDE ISSUES**

Sunbelt attempts to cloud the issue of network territorial exclusivity with irrelevant facts unworthy of serious consideration. Sunbelt's accusation that Max Media will soon be in control of "four networks within the Great Falls DMA" is grossly misleading. Max Media does operate an ABC affiliate in the Great Falls market (KFBB-TV). Destiny, not Max Media, controls the current NBC affiliate. And while Max Media does have a pending application that seeks authorization to acquire KLMN(TV), such an acquisition requires prior Commission consent and a waiver of the Commission's duopoly rule based on the economically "failing" nature of KLMN(TV). Further, Max Media has absolutely no control over the cable WB affiliate in Great Falls. In short, Max Media is far from being, or becoming, a monopoly force in the Great Falls DMA.

Further, Sunbelt greatly distorts Max Media's argument regarding network territorial exclusivity and LPTV stations. Contrary to Sunbelt's claim, Max Media has never argued that low-power television stations cannot serve as network affiliates. Rather, Max Media's position has been clear – the Commission cannot construe low-power stations as

"broadcast stations" in applying the network territorial exclusivity rule to this situation and still achieve the underlying purpose of that rule.

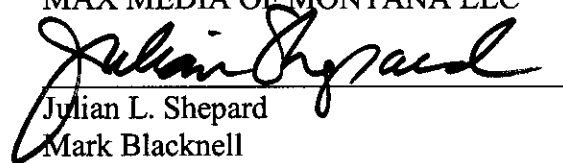
#### IV. CONCLUSION

For the reasons stated above, in Max Media's and Destiny's pleadings and *ex parte* submissions and in the June 17, 2005 Joint Motion for Expedited Issuance of Show Cause Orders, the Renewed Motion should be denied by the Commission.

Respectfully submitted,

MAX MEDIA OF MONTANA LLC

By:



Julian L. Shepard

Mark Blacknell

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DESTINY LICENSES, LLC

By:



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Garvey Schubert Barer

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June 20, 2005

## CERTIFICATE OF SERVICE

I, Angela C. Spencer, do hereby certify that on this 20th day of June, 2005, a copy of the foregoing "Joint Opposition to Sunbelt's Renewed Motion" was served by first class United States mail, postage prepaid, addressed to:

Thomas J. Hutton, Esq.  
Uhlmann/Latshaw Broadcasting LLC  
5823 Potomac Avenue, N.W.  
Washington, DC

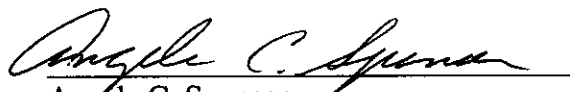
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Angela C. Spencer

## ***EXHIBIT 1***



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June 3, 2005

**BY HAND DELIVERY**

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Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
236 Massachusetts Avenue, N.E., Suite 110  
Washington, DC 20002

JUN - 3 2005

Federal Communications Commission  
Office of Secretary

Re: Notice of Oral *Ex Parte* Presentations – Request for  
Expedited Declaratory Ruling (MB Docket No. 04-75)

Dear Ms. Dortch:

On June 2, 2005, the undersigned counsel to Max Media of Montana LLC ("Max Media"), and Erwin G. Krasnow, Esq., Garvey Schubert Barer, counsel to Destiny Licenses, LLC ("Destiny"), met with Ms. Catherine Bohigian, Legal Advisor to Chairman Kevin J. Martin, regarding the Request for Expedited Declaratory Ruling filed on February 25, 2004 (Public Notice DA 04-747, March 19, 2004). The representatives of Max Media and Destiny reiterated the positions set forth in their pleadings in this proceeding and countered the argument that if low-power television station ("LPTV") KBGF-LP, Great Falls, Montana, carries NBC programming, the issue of a network territorial exclusivity rule violation would be moot. Beartooth Communications Company, the licensee of KTVH, Helena, Montana, recently acquired this low power station.

Max Media and Destiny distinguished the case where the network organization is switching affiliations among stations licensed to the same community, *i.e.*, the *Scripps Howard* precedent (*see* Letter to Eugene F. Mullin and Nathaniel F. Emmons, 10 FCC Rcd 4416, 78 RR 2d 88 (1995), from this case where a station has tried to cure its violation of the network territorial exclusivity rule with an eleventh-hour acquisition of a low power television station in the protected community, *i.e.*, Great Falls, Montana. In 1999, Sunbelt bargained for and acquired expanded territorial exclusivity in violation of Section 73.658(b), and apparently now Beartooth, Sunbelt's subsidiary, plans to utilize the recently-acquired KBGF-LP to distribute the NBC programming to a limited portion of the Great Falls community after KTGF's NBC affiliation agreement is terminated. Under these circumstances, KBGF-LP should not be considered a "broadcast station" in the Great Falls community sufficient to bring this case within the scope of the *Scripps Howard* precedent.

Substantial harm to the public interest would result from equating KBGF-LP with KTGF for the purposes of Section 73.658(b). NBC network programming now available to viewers in Great Falls would be substantially diminished because of the extremely limited coverage of LPTV station

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June 3, 2005

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KBGF-LP. Attached hereto is a coverage map prepared by a qualified consulting engineering firm, du Trel, Lundin & Rackley, depicting the vastly reduced coverage that KBGF-LP would provide to Great Falls. KTGF presently provides NBC network programming to 16,338 more viewers than KBGF-LP's 74 dBu contour would reach. Furthermore, KBGF-LP is far less able to serve viewers in the rural areas of Great Falls. KBGF-LP covers less than 7% (466 sq. miles) of KTGF's present vast coverage area (6,784 sq. miles).

The LPTV service was created in 1982 as a *secondary* service. See Establishment of a Class A Television Service, Report and Order, 15 FCC Rcd 6355, para 2. (2000). Subsequently, the Commission has repeatedly declined to treat LPTV and full-power stations as equivalent in terms of interference protection, public interest obligations, and community service. The sacrifice of LPTV service in the Commission's DTV allotment/assignment process clearly illustrates this point. Moreover, a 1996 allotment proceeding, where an objecting party argued that Lewiston, Montana could be just as well served by an existing LPTV station in lieu of a full-power station using the proposed allotment, further illustrates this point:

We have not in the past considered the availability of LPTV stations as a substitute for full-power stations in allotment proceedings, and [the proponent of that change] has not demonstrated why we should do so now. All broadcast television stations must serve the needs and interests of their communities of license. LPTV stations do not have the same public service obligations. Also, LPTV service is secondary to full-power television service, subject to destructive interference. As a result, LPTV service to the residents of Lewistown could have been less reliable, and we decline to equate it with service from a full-power station assured of interference protection. Amendment of Section 73.606(b) Table of Allotments, TV Broadcast Stations (Billings and Lewistown, Montana), *Memorandum Opinion and Order*, 11 FCC Rcd 8560 (1996).

The territorial exclusivity rule is grounded in the public interest. The rule is intended to ensure a given community is not deprived of network service as a result of anti-competitive arrangements between a station licensed to another community and a network organization. In adopting the rule changes that resulted in the present territorial exclusivity rule, the Commission stated:

Section 3.568(b) of the Commission Rules presently permits a television station which renders coverage to a substantial portion of the service area of a station located in another community to contract with a network to prevent the station in the other



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community from carrying particular network programs; even though the sponsor of the program or network may desire that the latter station also broadcast the programs. *The proposed amendment would revise the [territorial exclusivity rule] so as to preclude a station in one community from depriving stations in other communities of the opportunity of securing and carrying the same network programs.* Report and Order, 12 R.R. 1537, para 3. (1955). [Emphasis added.]

In sum, the Commission should reject Sunbelt's eleventh hour attempt to cure its violation of the territorial exclusivity rule. Sunbelt's attempt to rewrite the network territorial exclusivity rule is contrary to the public interest and is plainly inconsistent with precedent and the Commission's existing rules and policies. Pursuant to Section 1.1206(b) of the Commission's Rules, an original and one copy of this letter are being submitted to the Secretary's office, with a copy to Ms. Catherine Bohigian. In addition, a copy of this letter, with attachment, has been served on all parties of record to this proceeding.

Respectfully submitted,



Julian L. Shepard

cc: Ms. Catherine Bohigian



## CERTIFICATE OF SERVICE

I, Angela C. Spencer, do hereby certify that on this 3<sup>rd</sup> day of June, 2005, a copy of the foregoing "Notice of Ex Parte Oral Presentations – Request for Expedited Declaratory Ruling (MB Docket No. 04-75)" was served by first class United States mail, postage prepaid, addressed to:

Erwin G. Krasnow, Esq.  
Garey Schubert Barer  
1000 Potomac Street, NW , Fifth Floor  
Washington, DC 20007

Thomas J. Hutton, Esq.  
Uhlmann/Latshaw Broadcasting LLC  
5823 Potomac Avenue, N.W.  
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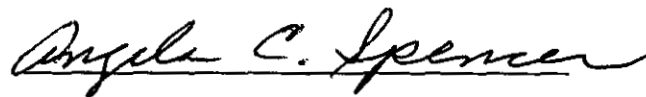
F. William LeBeau, Esq.  
National Broadcasting Company, Inc.  
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Angela C. Spencer

***EXHIBIT 2***



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June 10, 2005

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236 Massachusetts Avenue, N.E., Suite 110  
Washington, DC 20002

JUN 10 2005

Federal Communications Commission  
Office of Secretary

Re: Notice of Oral *Ex Parte* Presentations – Request for  
Expedited Declaratory Ruling (MB Docket No. 04-75)

Dear Ms. Dortch:

On June 8, 2005, the undersigned, counsel to Max Media of Montana LLC (“Max Media”), and Erwin G. Krasnow, Esq., Garvey Schubert Barer, counsel to Destiny Licenses, LLC (“Destiny”), met with the staff of the Media Bureau, including Messrs. Roy J. Stewart, Senior Deputy Bureau Chief; William H. Johnson, Deputy Bureau Chief; Robert H. Ratcliffe, Deputy Bureau Chief; John B. Norton, Deputy Chief of the Policy Division; and Ms. Jane Gross regarding the Request for Expedited Declaratory Ruling filed on February 25, 2004 (Public Notice DA 04-747, March 19, 2004).

The representatives of Max Media and Destiny reiterated the positions set forth in their pleadings in this proceeding and countered the argument that if low-power television station (“LPTV”) KBGF-LP, Great Falls, Montana, carries NBC programming, the issue of a network territorial exclusivity rule violation would be moot. The STA recently granted to Beartooth Communications to operate KBGF-TV at reduced facilities (File No. BSTA-20050513ADP) on a co-located basis with one of KTVH’s translators (Channel 51), only *sharpens* the reasons for not equating KBGF-LP with KTGF(TV) for the purposes of Section 73.658(b). In addition, the KTVH translator is not a broadcast station licensed to the community of Great Falls for purposes of the network territorial exclusivity rule. It is an extension of KTVH, Helena, Montana.

Under these circumstances, KBGF-LP should not be considered a “broadcast station” in the Great Falls community sufficient to bring this case within the scope of the *Scripps Howard* precedent (see Letter to Eugene F. Mullin and Nathaniel F. Emmons, 10 FCC Rcd 4416, 78 RR 2d 88 (1995)). In a previous *ex parte* submission, Max Media and Destiny distinguished the case where the network organization is switching affiliations among stations licensed to the same community, *i.e.*, the *Scripps Howard* precedent, from this case where a station has tried to cure its violation of the network territorial exclusivity rule with an eleventh-hour acquisition of a low-power television station in the protected community, *i.e.*, Great Falls, Montana. See Letter to FCC Secretary dated June 3, 2005.

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Ms. Marlene H. Dortch

June 10, 2005

Page 2

The representatives of Max Media and Destiny argued that the public record of this proceeding has been open for more than one year. During that time, no party, including Sunbelt and NBC, has adduced any objective evidence, documentary or testamentary in nature, to substantiate the naked and self-serving assertion that NBC exercised independent business judgment in its 1999 decision to terminate its affiliation with station KTGF(TV). Furthermore, there appears to be no legitimate basis for NBC to abandon broadcast distribution of its signal in the community of Great Falls rather than maintaining an established NBC affiliate, KTGF(TV). If the cost of the affiliation were an issue, one would reasonably expect NBC to negotiate with the affiliate over network compensation. No such negotiations have occurred.

NBC cannot legitimately claim that it can achieve comparable distribution of its programming by other means. NBC simply cannot replicate the coverage of KTGF(TV), complete with local programming, even if it relies on program delivery to Great Falls via a combination of KBGF-LP, cable systems, and satellite service. Local news programming is a major factor in determining the viewership of prime-time network programming. The absence of local news would diminish the value of network program distribution to any local market.

By replacing KTGF(TV) with KBGF-LP for over-the-air delivery of NBC programming, NBC would lose broadcast coverage to more than an estimated 16,338 over-the-air viewers. In addition, substantial number of the viewers without broadcast reception would be in rural portions of Great Falls, where cable systems reach fewer homes. Therefore, only a fraction of those viewers losing free over-the-air service will actually be able to turn to cable for local NBC programming. DMA-wide cable penetration in Great Falls is only 56% (Nielsen, February 2005), far below the national average. Finally, with respect to NBC's reach via satellite, it is important to note that DBS penetration in the Great Falls DMA is only 30 % (Nielsen, February 2005), and neither DirecTV nor EchoStar offer local-into-local service in Great Falls. Thus, former KTGF(TV) viewers forced to rely on cable or DBS would be receiving out-of-market NBC programming without local news and local programming.

Finally, Destiny's attempts to renew the affiliation for KTGF(TV) after Destiny consummated the acquisition resulted in statements from NBC officials wholly inconsistent with a picture of NBC exercising independent business judgment. To supplement the record of this proceeding on this point, attached is a Supplemental Declaration of Darnell Washington, in which he explains what he was told by NBC officials when he inquired about the possibility of renewing KTGF(TV)'s network affiliation agreement. The relationship between NBC and Sunbelt appears to be the driving force behind NBC's business judgment. Accordingly, NBC's business judgment was not independent.

The representatives of Max Media and Destiny advocated the issuance of an Order to Show Cause why the licenses of all six stations under common ownership by Sunbelt that were mentioned or referred to in the 1999 letter from NBC to James Rogers should not be revoked for the violation of the Section 73.658(b) of the Commission's rules. Pursuant to Section 1.1206(b) of the



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Ms. Marlene H. Dortch  
June 10, 2005  
Page 3

Commission's Rules, an original and one copy of this letter are being submitted to the Secretary's office, with a copy to Messrs. Stewart, Johnson, Ratcliffe, Norton and Ms. Gross. In addition, a copy of this letter, with attachment, has been served on all parties of record to this proceeding.

Respectfully submitted,



Julian L. Shepard

Attachment

cc: Roy H. Stewart  
William H. Johnson  
Robert H. Ratcliffe  
John B. Norton  
Jane Gross

### DECLARATION OF DARNELL WASHINGTON

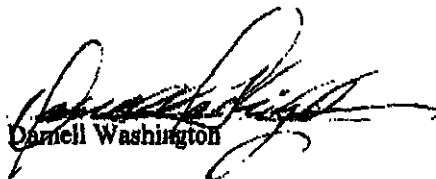
Under penalty of perjury, I, Darnell Washington, hereby declare that:

1. I am the President of Destiny Communications, LLC. ("Destiny") the parent entity of the licensee of KTGF(TV), Great Falls, Montana. I have personal knowledge of the following facts, except where noted.

2. On February 23, 2005, I met with John Damiano, Executive Vice President of Affiliate Relations for NBC Universal, Inc ("NBC") at NBC's corporate headquarters, located at 30 Rockefeller Plaza, New York, New York. We met to discuss the status of KTGF(TV)'s affiliation with NBC. I explained the strengths of Destiny as a new affiliate, and asked what Destiny could do to secure the renewal of KTGF(TV)'s affiliation. Mr. Damiano stated that "we would love to work with you on other NBC stations." He further explained that, because of a "personal relationship between Jim Rogers and Bob Wright, there is no chance of turning it around." Thus, it became obvious to me that the decision to terminate KTGF(TV)'s affiliation was not independent of the personal relationship between the Jim Rogers and Bob Wright.

3. My understanding was further confirmed on March 30, 2005, when I approached Bob Wright during a break at an NBC affiliates meeting in New York, New York. I introduced myself to Mr. Wright and asked him whether NBC would reconsider its decision to terminate KTGF(TV)'s affiliation. In response, Mr. Wright stated that "NBC has a long term relationship with Sunbelt, and I have a long-standing relationship with Jim Rogers, and there is no chance of changing the decision."

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 10, 2005.

  
Darnell Washington

## CERTIFICATE OF SERVICE

I, Angela C. Spencer, do hereby certify that on this 10<sup>th</sup> day of June, 2005, a copy of the foregoing "Notice of Ex Parte Oral Presentations - Request for Expedited Declaratory Ruling (MB Docket No. 04-75)" was served by first class United States mail, postage prepaid, addressed to:

Erwin G. Krasnow, Esq.  
Garey Schubert Barer  
1000 Potomac Street, NW , Fifth Floor  
Washington, DC 20007

Thomas J. Hutton, Esq.  
Uhlmann/Latshaw Broadcasting LLC  
5823 Potomac Avenue, N.W.  
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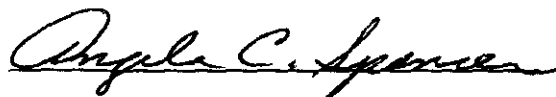
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1299 Pennsylvania Avenue, N.W.  
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Mr. John F. Damiano  
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Eugene, OR 97440-2747



Angela C. Spencer

## ***EXHIBIT 3***

## DECLARATION OF LINDA GRAY

Under penalty of perjury, I, Linda Gray, hereby declare that:

1. I am the President of Max Media of Montana LLC ("Max"). I have personal knowledge of the following facts, except where noted.

2. I was responsible for oversight of KTGF(TV)'s operations while it was licensed to a Max subsidiary, which acquired the station on March 28, 2001. Destiny Communications, LLC acquired KTGF(TV), Great Falls, Montana from the Max subsidiary, MMM License LLC, on November 24, 2004.

3. I have read the Renewed Motion of Sunbelt Communications Company ("Sunbelt") to Terminate Proceeding as filed on June 14, 2005, and have discovered a number of factual inaccuracies and misrepresentations contained in that filing. My comments here are intended to correct those misstatements, and are limited to the period of time during which Max controlled the licensee of KTGF(TV).

4. First and foremost, KTGF(TV) had a solid local news operation under Max's ownership. Shortly after Max's acquisition of the station, KTGF(TV) hired a full-time reporter who was responsible for the daily gathering and reporting of stories in and around Great Falls. These stories were then broadcast by KTGF(TV), utilizing certain production services of an outside contractor. While that contractor's production facilities are located in Davenport, Iowa, the news program content was gathered and broadcast in Great Falls. In fact, the ratings for "Big Sky News" on KTGF(TV) in Great Falls, in its final Nielsen report (Nov '04) under Max ownership, show that out of the three local newscasts airing at 10pm it was the #2 rated local newscast in most female demographics and tied for #2 in most male demographics.

5. Second, Sunbelt's assertion that Max's regional news operation known as "Big Sky News" was cancelled in November 2004 is simply untrue. All of the Max stations in Montana carried Big Sky News programming until February 21, 2005, at which point Big Sky

News became the "Montana News Network." The Montana News Network, with a focus on local and regional issues, is carried on most Max-owned stations in Montana to this day. All Montana News Network stories and content are generated by reporters employed at various Max stations around the state. The carriage of Big Sky News on KTGF(TV) provided regular and extensive coverage of issues of direct local and regional interest to Great Falls viewers.

6. Further, Max's ownership improved KTGF(TV)'s status as an integral part of the Great Falls community. Under Max, KTGF(TV) produced and aired programs like "Unsung Hero," which focused on area citizens making a difference in the community. These were sixty second news features that highlighted a different Great Falls area leader/volunteer each month and the contributions they made to the community. They aired multiple times in all dayparts throughout the month. KTGF(TV) also aired a "Community Calendar" throughout the day, bringing attention to community activities and not-for-profit organization events. In addition to these local interest stories, Max regularly aired locally produced programming such as "Kitchen Guy" (a weekly two and a half minute cooking segment w/an emphasis on health and nutrition) and "Monday Motivator" (a weekly two and a half minute segment that addressed self-improvement and interpersonal skills). In addition to these local-interest and locally-produced programs, KTGF(TV) carried Montana State University football games when they had local appeal.

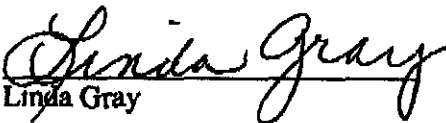
7. Finally, I believe it is important to note that Sunbelt's characterization of Max as attempting to control "four networks within the Great Falls DMA" is grossly misleading. Max does operate an ABC affiliate in the market (KFBB-TV). Destiny, not Max, controls the current NBC affiliate. And while Max does have a pending application that seeks authorization to acquire KLMN(TV), such an acquisition requires prior Commission consent and a waiver of the

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Commission's duopoly rule based on the economically "failing" nature of KLMN(TV). Currently, the station's affiliation with UPN only results in two hours a day of programming. In addition, Max exerts no control over the cable WB affiliate in Great Falls. In short, the attempt to characterize Max as a media consolidator in the Great Falls DMA is completely unsupported by the facts.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 17, 2005.

  
Linda Gray

***EXHIBIT 4***

## DECLARATION OF DARNELL WASHINGTON

Under penalty of perjury, I, Darnell Washington, hereby declare that:

1. I am the President of Destiny Licenses, LLC. ("Destiny"). I have personal knowledge of the following facts, except where noted.
2. Destiny's parent entity acquired KTGF(TV), Great Falls, Montana from MMM License LLC ("Max Media") on November 24, 2004. I have been responsible for oversight of KTGF(TV)'s operations since that time.
3. I have read the Renewed Motion of Sunbelt Communications Company to Terminate Proceeding as filed on June 14, 2005, and here respond to a number of factual inaccuracies and misrepresentations contained in that filing. My comments and corrections are limited to the period of time since Destiny acquired control of KTGF(TV).
4. KTGF(TV) continues to have a credible local news operation under Destiny's ownership. KTGF(TV) has a full-time reporter on staff who is responsible for the daily gathering and reporting of stories in and around Great Falls. Destiny is working hard to turn KTGF(TV) from a station that was supported through Max Media's station group infrastructure into a stand-alone station. As part of this process, Destiny is rebuilding the news operation, which has admittedly been challenged by no longer having access to the production facilities possessed by Max Media. Within the next three months, Destiny will have the capacity to produce and insert local news story segments on the daily "Newswatch" program carried by the station.
5. KTGF(TV)'s carriage of the Max Media-produced "Big Sky News" continued beyond November 2004, contrary to Sunbelt's claim. KTGF(TV) continued to air Big Sky News until it was replaced with Newswatch on January 31, 2005.

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6. Finally, KTGF(TV) continues to function as an integral part of the Great Falls community. In addition to its over-the-air programming, KTGF(TV) provides local news stories on its website, such as those regarding efforts to retain local military bases, disaster information pertaining to spring flooding, and efforts by the State of Montana to improve the legal defense system for the indigent. KTGF(TV) continues to serve as a media sponsor on numerous projects, which have included the C. M. Russell Auction, Golden Mental Health Capital Campaign, Boys & Girls Club Mardi Gras fundraiser, Habitat for Humanity, Boys & Girls Club/ IOF Foresters Swimming for Hope, and the Montana Addy Awards. In a similar vein, we also produce commercials and promote campaigns for The Rivers Edge Trail, Great Falls Food Bank, Malmstrom Guardian Auction, Missouri River Dance Co, BASH for the support of the Catholic University, and the Great Falls Advertising Federation.

7. In short, Destiny has continued to provide Great Falls viewers with high-quality local service from KTGF(TV), and is working to continually improve that service.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 20, 2005.

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Darnell Washington